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September 15, 1997

*Via Courier*

William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

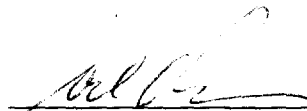
Re: Comments of Excel Communications, Inc.  
In the Matter of Implementation of the Subscriber Carrier Selection Changes  
Provisions of the Telecommunications Act of 1996 -- CC Docket No. 94-129

Dear Mr. Canon:

On behalf of Excel Communications, Inc. ("Excel"), please find enclosed for filing an original and twelve (12) copies of the Comments of Excel in the above-referenced Docket. Also enclosed is a diskette containing Excel's comments formatted using WordPerfect 5.1.

Please date-stamp the enclosed extra copy of this filing and return it with our courier. If you have any questions concerning this filing, please do not hesitate to contact the undersigned.

Respectfully submitted,

  
C. Joël Van Over  
Dana Frix

Its Counsel

Enclosures

cc: Robbin Johnson  
Cathy Seidel (CCB)  
Formal Complaint Branch (CCB)  
ITS

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20054

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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In the Matter of )  
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Implementation of the Subscriber Carrier )  
Selection Changes Provisions of the )  
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Policies and Rules Concerning )  
Unauthorized Changes of Consumers' )  
Long Distance Carriers )  
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CC Docket No. 94-129

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**COMMENTS OF**  
**EXCEL COMMUNICATIONS, INC.**  
\_\_\_\_\_

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Robbin Johnson

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Counsel for Excel Communications, Inc.

Dated: September 15, 1997

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20054**

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CC Docket No. 94-129

Excel Communications, Inc. ("Excel"), through undersigned counsel, hereby submits the following comments in response to the referenced Notice of Proposed Rulemaking ("NPRM"), which seeks to implement Section 258 of the Telecommunications Act of 1996 (the "Act") within the context of the overriding pro-competitive policy goals of that Act.

**Statement of Interest**

Excel is the ultimate parent company of Excel Telecommunications, Inc., the fifth largest long distance company in the United States in terms of presubscribed lines. Excel's operating subsidiaries are authorized by numerous state public service commissions to provide resold interexchange telecommunications services nationwide. Additionally, Excel's operating subsidiaries currently are authorized to provide competitive local exchange services in approximately 30 states and have applications pending for competitive local exchange authority in the remaining 20 states. Excel's subsidiaries offer a diversified array of telecommunications services, including residential service, commercial service, paging service and calling cards.

## **Introduction**

Excel supports the Commission's efforts to adopt carrier selection verification procedures that apply to all telecommunications carriers, including both submitting and executing carriers, as defined by the Commission's NPRM in this docket.<sup>1</sup> Excel further supports the Commission's desire to adopt regulations that are sensitive to the fact that incumbent local exchange carriers will for some time hold a unique position as an executing carrier for most carrier selection changes including those for which they are also the submitting carrier (directly or through an affiliate). Excel also supports the Commission's efforts to adopt carrier dispute resolution provisions that encourage the apportionment of liability for unauthorized carrier changes based upon fault. Because the changes to the Commission's existing verification procedures mandated by Section 258 of the Telecommunications Act of 1996 implicate complex and far reaching issues, however, Excel urges the Commission to consider all comments and replies in the current comment cycle and then to publish its actual proposed rules for comment on an expedited basis.

Apart from the need to publish clear and precise proposed rules for comment prior to their adoption, Excel comments as follows.

## **The Commission Should Pre-empt Inconsistent State Regulation**

Section 258 of the Act requires that the Commission's carrier selection rules apply to all telecommunications carriers and to all changes in a subscriber's carrier selection for "exchange

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<sup>1</sup> Further Notice of Proposed Rulemaking and Memorandum Opinion and Order on Reconsideration, *e.g.* ¶ 13.

services or telephone toll service.” This statutory mandate requires that the Commission’s rules preempt inconsistent state rules.

Excel is concerned that state and Commission initiatives to regulate carrier selection procedures will result in a patchwork of inconsistent and sometimes conflicting carrier change regulations. Once the Commission’s rules take effect, in states where different or inconsistent rules have been adopted, carriers will be governed by multiple sets of rules for the same services.

The expense of compliance with as many as 51 varying sets of carrier change regulations will be prohibitive. Rather than embarking on cost-effective nationwide marketing campaigns, carriers will be forced to target their marketing on a state-by-state basis. The start-up time and costs for a carrier to bring its procedures into compliance with various states’ requirements may stifle, and will certainly delay competition. In fact, in certain states (*e.g.*, California), carriers will have to modify their verification procedures based on the end-user customer (residential versus business).<sup>2</sup> Ultimately, the costs associated with tailoring marketing and verification programs to multiple state requirements, as well as FCC requirements, will significantly drive up the cost of doing business, without commensurate consumer protection benefits. Carriers will be forced to pass those costs on to consumers.

Additionally, consumer confusion is unavoidable, in the face of potentially ambiguous and inconsistent verification requirements. For example, what happens if a business with offices in more

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<sup>2</sup> California law now requires (by statute) that carriers obtain independent, third-party verification when executing a change in a residential subscriber’s telephone service provider. *See* California Annotated Code §2889.5.

than one state determines to change its local and/or long distance service for all of its offices? If some or all of the states in which the business is located have different or inconsistent carrier change rules in place, must the carrier satisfy the requirements for each state, requiring the business to thus complete numerous verifications and/or LOAs? Further, when a customer opts to purchase local and long distance service from one carrier, it makes little sense to apply different carrier selection rules to both components of a service the consumer perceives as “one” service.

**ILECs Should Not be Permitted to Leverage Their Market Position by  
Circumventing the Purpose of Carrier Selection Verification Procedures**

To remove incentives that incumbent local exchange carriers have to assure that their existing customers freeze their current local carrier selection now, and their long distance service as ILECs enter interexchange markets, the Commission should extend verification procedures to “PIC freeze” elections.

Extending verification rules to PIC freezes will benefit consumers for several reasons. Because PIC freezes may operate to lock a consumer into service that is no longer “authorized,” it is as important to assure that PIC freezes are authorized, through the same verification procedures that apply to carrier selection changes. Verification procedures, in both instances, serve to protect consumer choice. Moreover, if a consumer does not understand the consequences of a PIC freeze or remember that one is in place, the consumer may authorize a carrier selection change that cannot be effected. If this occurs, the new carrier’s transaction costs are raised by the steps that must be taken to lift the freeze and effect the consumer’s choice. Additionally, the consumer may blame the new

carrier because that carrier is unable to effect the change the consumer has requested, and may cancel the new service merely because of the difficulties and delay involved in changing service.

Additionally, neither an incumbent local exchange carrier ("ILEC") nor its affiliates should be permitted to solicit a PIC freeze from an existing customer, for any service, after it has received a request to execute a carrier selection change for that customer.

Excel agrees that this attempt to change a subscriber's decision to switch carriers would violate the verification rule prohibiting carriers from combining letters of agency (LOAs) with other inducements. Nor should ILECs be permitted to dissuade new carrier selections under the guise of seeking to verify a carrier selection. This procedure could be used to dissuade a legitimate consumer selection and could constitute an interference with the legitimate relationship between the new carrier and the consumer. Finally, an ILEC or another executing carrier should not be permitted to use information obtained from a submitting carrier to engage in a marketing campaign with the consumer, whether under the guise of verifying the consumer's carrier selection or otherwise. Clear responsibility must be placed upon the submitting carrier to submit only authorized preferred carrier changes, and upon the executing carrier to properly and quickly execute such changes. Excel, therefore, suggests that the Commission adopt a rule requiring executing carriers to effect submitting carrier requests within seven days. This rule would also reduce PIC disputes caused by conflicting requests for carrier changes. Many of these conflicts arise because the executing carrier fails to timely act on a carrier change request. A consumer, disappointed by a delay in new service, again changes carriers and, as a result, two carriers are authorized to provide service.

### **Welcome Packages Benefit Consumers**

The Commission's current rules properly permit welcome package verifications of carrier selection authorizations by customers. The current rules should not be changed because they constitute a timely written confirmation of a customer's selection and provide the customer with an opportunity to cancel the order. Because the Welcome Letter is no more than a post-sale verification, it does not, by definition, constitute a negative option LOA. Indeed, it assures that the customer has the information necessary to question or reconsider an order *before* the service is changed and *before* the customer has received an invoice from the new carrier.

In summary, eliminating the Welcome Letter verification option will not eliminate unscrupulous telemarketers, but it would eliminate an important consumer service.

### **The Liability Provisions of Section 258 Must Be Implemented to Remove Incentives to Abuse the Carrier Selection Process**

The liability provisions of Section 258 must be implemented to assure that liability is assessed only for unauthorized carrier changes and that any unauthorized revenues are distributed fairly. Accordingly, Excel recommends an approach that encourages the quick and efficient resolution of unauthorized carrier change complaints where Commission verification procedures have allegedly not been followed.

First, to encourage consumers to report unauthorized carrier changes in a timely fashion, Excel suggests that submitting carriers (the alleged unauthorized carriers) have the option of waiving payments by the consumer if the consumer reports the unauthorized change to that carrier within sixty



days of the carrier change. This would provide consumers with an incentive to act quickly and would deter those situations where a consumer may report an unauthorized change after several months of service merely to avoid payments to authorized carriers. Moreover, quick resolution of complaints to submitting carriers will encourage the early restoration of service to the authorized carrier.

Excel further proposes that if a consumer reports an unauthorized carrier change to the submitting carrier (the alleged unauthorized carrier) between two and six months from the date of the carrier change, the consumer would be charged only the amount that would be owed had the consumer not changed carriers. The new carrier would then be required to pay its revenues, if any, to the former carrier if it is established that the consumer was in fact the victim of an unauthorized carrier change. The dispute resolution provisions and the liability test proposed by the Commission would provide the basis for determining any liability among carriers.

Finally, Excel recommends that if a consumer does not complain that service has been changed to an unauthorized carrier for a period of six months or more, the submitting carrier (the alleged unauthorized carrier) should have the option of collecting all charges from the customer, and resolving whether any refund of revenues is due the former carrier based upon the Commission's proposed dispute resolution and liability tests. If the dispute resolution or complaint process resolves in favor of the former carrier, the unauthorized carrier would refund all lost revenue to the former carrier to the extent that the unauthorized carrier had collected charges from the customer. The authorized carrier would then credit to the customer any sums, to make the consumer whole. In no event, however, should the "unauthorized" carrier be required to pay twice, to make a full refund to the customer and pay lost revenue to the former "authorized" carrier.

In those cases where a consumer complains directly to the Commission, the Commission should refer the complaint to the submitting carrier for resolution under the guidelines outlined above.

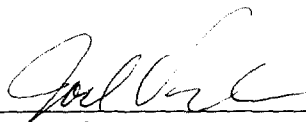
**Conclusion**

Excel encourages the Commission to issue a further NPRM after it has tentatively adopted final regulations, in accord with Excel's comments.

Respectfully submitted,

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Robbin Johnson

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